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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

18 CR 224 (AJN)

5 ALI SADR HASHEMI NEJAD,

6 Defendant.

7 -----x
8 New York, N.Y.
9 September 9, 2019
10:10 a.m.

10 Before:

11 HON. ALISON J. NATHAN,

12 District Judge

13 APPEARANCES

14
15 GEOFFREY S. BERMAN,
16 United States Attorney for the
17 Southern District of New York
MICHAEL KIM KROUSE
Assistant United States Attorney

18 REID WEINGARTEN
19 BRIAN M. HEBERLIG
Attorneys for Defendant

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1 (Case called)

2 THE COURT: I'll take appearances of counsel, starting
3 with the government.

4 MR. KROUSE: Good morning, your Honor. Michael
5 Krouse, for the United States.

6 THE COURT: Good morning, Mr. Krouse.

7 MR. WEINGARTEN: Good morning, your Honor. Reid
8 Weingarten and Brian Heberlig, from Steptoe & Johnson. My
9 client is here.

10 THE COURT: Good morning, Mr. Weingarten,
11 Mr. Heberlig.

12 Good morning, Mr. Sadr.

13 THE DEFENDANT: Good morning.

14 THE COURT: We are here today for a hearing pursuant
15 to the case of United States v. Curcio to advise Mr. Sadr of
16 his right to counsel without conflict, and if he desires to
17 confirm on the record, after time to consult with counsel,
18 including independent counsel, if he wishes, that he is
19 prepared to go forward with his current representation. We are
20 also here for a status and scheduling conference.

21 Let me just indicate what I received in advance of
22 today's proceeding. I received from the government, related to
23 the Curcio issues, a July 26th, 2019 letter; from defense
24 counsel, a July 28th, 2019 letter; and a letter from the
25 government -- joint letter, but filed by the government on

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1 September 3rd, 2019, and that included as an attachment a
2 written waiver from JP Morgan Chase. And then I did receive a
3 letter pertaining to scheduling, dated September 3rd, 2019.

4 Counsel, anything else I should have in front of me
5 for purposes of today's proceeding?

6 MR. KROUSE: No, your Honor.

7 MR. WEINGARTEN: No, Judge.

8 THE COURT: I have one preliminary question for
9 counsel before jumping into the Curcio, and that's this: The
10 letters indicate that Steptoe & Johnson currently represents
11 JP Morgan Chase, which the government alleges is a victim bank
12 in the case. There is also indication -- and I have some
13 information related to the specific representation of JP Morgan
14 Chase, which appears to be unrelated to the criminal matter
15 before us. It's also indicated that Steptoe has previously
16 represented other alleged victims, so not a current
17 representation, but that Steptoe has represented Citibank, UBS,
18 and Commerzbank, correct?

19 MR. HEBERLIG: That is correct, your Honor.

20 THE COURT: And that has been indicated, also, as
21 unrelated representation, but I don't think that I know
22 anything further about that representation.

23 The proposed script -- I don't know if it's a joint
24 proposed script or, Mr. Krouse, if that is from the
25 government -- that discusses only the current representation of

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1 JP Morgan Chase, and I just wanted to understand the thinking
2 behind not -- it seems to me, at first blush, that essentially
3 the same issues arise -- potential issues arise with respect to
4 the former representations. Mr. Krouse?

5 MR. KROUSE: Sure, your Honor. And I will say for the
6 record that the proposed script was sent to defense counsel and
7 was worked on jointly. So, while it was filed by the
8 government, it is from both counsel.

9 In conversations with the defense, the view was
10 expressed by them that their prior representations of those
11 banks would not give rise to a conflict because they weren't
12 ongoing, they didn't occur during the time frame of the
13 representation of Mr. Sadr, and, for that reason, the focus
14 became their current representation of JP Morgan, giving rise
15 to a conflict of interest with the firm with respect to
16 Mr. Sadr and JP Morgan, and that that prior representation of
17 these banks, with no active case, didn't give rise to the same
18 concerns.

19 THE COURT: I suppose it doesn't give rise to the same
20 concerns. The walling-off process for an ongoing
21 representation presents different issues, but it's still the
22 case that the duty of confidentiality is owed to the former
23 clients, the duty of loyalty is owed to the former clients,
24 right?

25 MR. KROUSE: That is correct, your Honor. I guess it

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1 would be helpful to hear from defense counsel their view and
2 also the nature of those representations, but the government's
3 understanding is that the nature of those prior representations
4 was obviously separate from this case --

5 THE COURT: Unrelated?

6 MR. KROUSE: Unrelated.

7 THE COURT: As is the case with the JP Morgan?

8 MR. KROUSE: Yes, your Honor.

9 -- and also predated their representation.

10 THE COURT: That is just another word for former
11 representation, I guess.

12 MR. KROUSE: Yes. I guess what I'm saying is there
13 was no overlap in time. Because they have represented Mr. Sadr
14 for a fairly long period of time, that there was no overlap
15 when they were representing both at the same time.

16 THE COURT: Always former?

17 MR. KROUSE: Yes.

18 THE COURT: In respect to this case?

19 MR. KROUSE: Yes.

20 THE COURT: Mr. Heberlig?

21 MR. HEBERLIG: Thank you, your Honor.

22 So, my knowledge of those prior representations is
23 somewhat deliberately limited. When this issue was raised by
24 the government, neither Mr. Weingarten, nor myself worked on
25 those other matters for Citibank, UBS, or Commerzbank. We have

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1 an internal conflicts team, a general counsel team at the firm.

2 THE COURT: I would hope so.

3 MR. HEBERLIG: Yeah. We made a deliberate decision
4 that it didn't make sense for us to learn the details of those
5 prior representations. We disclosed the issue to our internal
6 counsel. They reviewed those cases and concluded they were
7 unrelated, and the firm did not obtain any confidential
8 information from the banks that would give rise to a conflict
9 issue where we might be able -- well, obviously, we personally
10 wouldn't be able to use it on Mr. Sadr's behalf, but it
11 wouldn't even be imputed to the firm that we had some
12 confidential information relevant to this matter. But I don't
13 know the details of those prior representations by that
14 deliberate choice, so if that is important for this inquiry, we
15 can find out.

16 We have discussed this issue with Mr. Sadr, and to the
17 extent there is even a potential conflict because of the same
18 sort of pulling punches kind of issues, he would be prepared to
19 waive, just like he's prepared to waive the issues related to
20 JP Morgan.

21 The other difference between those prior
22 representations of the JP Morgan representations is obviously
23 we're not, as a firm, earning any revenue from any of those
24 former clients, so there's not that sort of financial potential
25 conflict either. But we're happy to proceed however the Court

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1 prefers. That's really all I know about those prior matters,
2 though.

3 THE COURT: Okay.

4 Well, I think, for purposes of today's proceeding, I
5 have reviewed the proposed script, and we'll follow it -- we'll
6 rely on it to some extent. In most instances, I will simply
7 substitute the victim banks where it's proposed that I say
8 JP Morgan Chase, because I think, although you've indicated
9 reasons to think there's even less of a concern of a potential
10 conflict, you've indicated that although you're not aware of
11 the nature of those representations deliberately, I presume it
12 has been indicated to you that they are unrelated, correct,
13 Mr. Heberlig?

14 MR. HEBERLIG: Yes, we have indicated that to Mr. Sadr
15 and also to the government in correspondence.

16 THE COURT: But it has been -- you've been informed by
17 conflict counsel that has reviewed the issue that the
18 representation of the -- the prior representations of the
19 banks, those were unrelated matters?

20 MR. HEBERLIG: That is correct, your Honor.

21 THE COURT: And you've indicated that conflict counsel
22 has informed you that no one -- no one at the firm obtained any
23 confidential information that could in any way bear on this
24 case?

25 MR. HEBERLIG: That is what I have been informed, yes,

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1 your Honor.

2 THE COURT: And you've further indicated that all
3 representation by the firm of the alleged victim banks, other
4 than JP Morgan Chase, ceased prior to your representation of
5 Mr. Sadr, and, as a result, there has never been any ongoing
6 financial interest of the firm in the representation of those
7 banks?

8 MR. HEBERLIG: So I think that's correct. I know we
9 no longer represent any of those three banks. I'm not
10 absolutely certain when those prior representations ended, and
11 if that's material, I can find out.

12 THE COURT: Mr. Krouse, you had indicated that that
13 was the case. What was your basis for that?

14 MR. KROUSE: That was my understanding from previous
15 conversations with counsel, but that could have been a
16 misunderstanding. My recollection of those conversations was
17 that there were prior representations, which we put a footnote
18 in our original letter stating that while our primary focus was
19 on the JP Morgan relationship since it was ongoing and an
20 ongoing source of revenue for the firm, those prior
21 representations preceded their representation of Mr. Sadr.

22 THE COURT: All right. Thank you.

23 Counsel, any other preliminary matters to raise before
24 I proceed?

25 MR. KROUSE: Not from the government, your Honor.

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1 MR. HEBERLIG: No, your Honor.

2 THE COURT: All right.

3 Mr. Sadr, how are you this morning, sir?

4 THE DEFENDANT: Good. Good morning, your Honor.

5 THE COURT: Good morning. You can remain seated.

6 I'll just ask you to pull up the microphone?

7 THE DEFENDANT: Sure.

8 THE COURT: As you know, we are here to conduct a
9 hearing pursuant to a case called United States v. Curcio. I'm
10 going to advise you of your right to counsel without conflict
11 and give you an opportunity to discuss the issues any further
12 with your counsel, if you'd like. I'll also give you the
13 opportunity to adjourn today's proceeding and discuss the issue
14 with independent counsel, if you like, and make sure that you
15 understand all the issues and determine whether you'd like to
16 go forward with your current representation.

17 Because this will be a colloquy between you and me,
18 and I want to make sure that you are knowingly and voluntarily
19 waiving your right to conflict-free counsel, if that is what
20 you choose to do, I will first place you under oath. I will
21 ask you to please rise and raise your right hand.

22 (Defendant sworn)

23 THE COURT: Thank you, sir. You may be seated. I'm
24 going to ask some preliminary questions to determine that you
25 are competent to proceed with today's proceeding.

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1 What is your full name?

2 THE DEFENDANT: My name is Ali Sadr. Sadr is spelled
3 S-a-d-r.

4 THE COURT: And, Mr. Sadr, how old are you?

5 THE DEFENDANT: I'm 39 years old, your Honor.

6 THE COURT: How far did you go in school?

7 THE DEFENDANT: I have both a Bachelor's and Master's
8 from Cornell University.

9 THE COURT: I went to Cornell.

10 In the past 24 hours, have you taken any pills, drugs,
11 or medication of any kind?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Have you consumed any alcoholic beverages
14 in the past 24 hours?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Have you ever been treated for any type of
17 mental illness?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Are you currently, or have you recently
20 been, under the care of a psychiatrist?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: How about a doctor other than a general --

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Your mind is clear today?

25 THE DEFENDANT: Yes. Thank you, your Honor.

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1 THE COURT: And you understand what's happening here
2 today?

3 THE DEFENDANT: Yes, yes.

4 THE COURT: Does either counsel have any doubt as to
5 Mr. Sadr's competence to proceed here today?

6 MR. KROUSE: No, your Honor.

7 MR. HEBERLIG: No, your Honor.

8 THE COURT: Based on Mr. Sadr's demeanor, as he
9 appears in court, his responses to my questions and the
10 representations of counsel, I do find that he is fully
11 competent to proceed with this Curcio hearing.

12 I'm going to explain the purpose of the proceeding to
13 you. I'm going to review various scenarios with you and ask
14 you some questions. As I've indicated, at some point, I am
15 going to ask you to state your understanding of these issues in
16 your own words to help assure me that you understand the
17 issues. And, ultimately, I'll ask you who you want to act as
18 your attorneys in this case. The purpose of this is to make
19 sure that you understand any potential risks to you from having
20 your current lawyers from the law firm of Steptoe & Johnson
21 continue to serve as your attorneys and to make sure that you
22 have carefully considered these risks, and you are making an
23 informed and voluntary decision about who you want as your
24 attorneys.

25 While I want you to be able to choose who you want to

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1 serve as your lawyers in this case, I do need to make sure that
2 you have a full understanding of the issues that a defendant
3 should consider in making such a choice. It is important that
4 you make a wise decision for yourself, and that's the purpose
5 of this proceeding.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: So, I want to provide just a few
9 background issues for you to help understand the specific
10 matters in this case.

11 I'm going to describe some duties that an attorney
12 has. An attorney has a responsibility to represent a client to
13 the best of his or her ability, giving that client the
14 attorney's best advice about the client's legal options and
15 keeping confidential any information that the client gives to
16 the attorney.

17 Do you understand that?

18 THE DEFENDANT: Yes, I understand.

19 THE COURT: Two of the responsibilities there are the
20 duty of loyalty and the duty of confidentiality.

21 As to the duty of loyalty, an attorney has a duty of
22 undivided loyalty to a client. That duty never ends, so it
23 does pertain to former clients. Do you understand that?

24 THE DEFENDANT: Yes. Yes, your Honor.

25 THE COURT: There is also the duty of confidentiality

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1 toward a client, keeping confident any information received
2 during the course of representation. That duty never ends. Do
3 you understand that?

4 THE DEFENDANT: Yes, I understand that.

5 THE COURT: Okay.

6 So, with that brief background in mind, I'm going to
7 ask some questions to assess your understanding of the issues
8 here. Let's begin with the nature of the representation.

9 Who currently represents you?

10 THE DEFENDANT: Your Honor, I'm represented by
11 Mr. Reid Weingarten and Mr. Brian Heberlig.

12 THE COURT: They are both attorneys at Steptoe &
13 Johnson LLP?

14 THE DEFENDANT: That's correct, your Honor.

15 THE COURT: Are you aware -- are you satisfied with
16 your attorneys' representation?

17 THE DEFENDANT: Absolutely satisfied. And I'm
18 grateful and lucky to have them.

19 THE COURT: Are you aware that Steptoe represents --
20 currently represents a bank, JP Morgan Chase, that the
21 government alleges is a victim in this matter? You understand
22 that?

23 THE DEFENDANT: Correct, I understand.

24 THE COURT: And they represent -- the firm represents
25 JP Morgan Chase in two unrelated matters, one of which relates

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1 to JP Morgan Chase's status as a qualified professional asset
2 manager and the other which relates to an investigation by the
3 Commodity Futures Trading Commission.

4 You understand that?

5 THE DEFENDANT: I understand, your Honor.

6 THE COURT: It's also the case that lawyers at
7 Steptoe & Johnson previously represented other alleged victim
8 banks in the case, specifically Citibank, UBS, and Commerzbank.

9 THE DEFENDANT: I understand that, yes.

10 THE COURT: And those representations by lawyers at
11 Steptoe ceased, but with respect to JP Morgan Chase, the
12 representations described are ongoing.

13 THE DEFENDANT: That's correct.

14 THE COURT: You understand that the government may
15 call a JP Morgan Chase employee to testify against you at
16 trial?

17 THE DEFENDANT: That's my understanding, correct.

18 THE COURT: And may call employees of the other victim
19 banks?

20 THE DEFENDANT: That's my understanding, yes.

21 THE COURT: And those employees may provide testimony
22 that the jury could use to support a guilty verdict against
23 you. You understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: For example, a witness may testify that

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1 certain transactions for the benefit of you, your companies,
2 your employees, or your agents were made through the victim
3 banks. Let me just define that term here. When I say victim
4 banks here, I mean alleged victim banks, and I mean
5 specifically JP Morgan Chase, or Citibank, or UBS, or
6 Commerzbank.

7 THE DEFENDANT: Correct, your Honor, yes.

8 THE COURT: Representations made by you, your
9 companies, your employees, or your agents -- I'm going through
10 some potential testimony that employees from the banks might
11 raise. So we've talked about certain transactions for the
12 benefit of you or your companies that were made through the
13 victim banks' representations made by you, your companies, your
14 employees, or your agents that were material to the business
15 decisions made by the victim banks, that victim banks have
16 procedures in place to prevent transactions through its
17 accounts for the benefit of businesses or individuals in Iran,
18 that victim banks face potential liability if they allow
19 transactions through its accounts for the benefit of businesses
20 or individuals in Iran, and/or victim banks had known all of
21 the facts about certain transactions for the benefit of you,
22 your companies, your employees, or agents, the banks would not
23 have engaged in those transactions.

24 Do you understand I was describing potential testimony
25 from employees of these banks?

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1 THE DEFENDANT: Yes, your Honor, I understand that.

2 THE COURT: You understand that such testimony could
3 be harmful to your defense?

4 THE DEFENDANT: Yes, your Honor, I understand.

5 THE COURT: Are you aware that in the course of
6 representing JP Morgan Chase now, or the other banks -- other
7 victim banks previously, lawyers at the law firm of Steptoe &
8 Johnson may have learned confidential information that they're
9 not permitted to disclose to anyone, even to you, and even if
10 the information is helpful to your defense?

11 THE DEFENDANT: That's correct, your Honor.

12 THE COURT: And not only must they keep that
13 information secret, they're also forbidden from using it in any
14 way, even if doing so would be helpful in your case. Do you
15 understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: So, specifically, Steptoe lawyers are
18 likely to examine or cross-examine any victim bank witnesses
19 called at trial --

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: -- and your lawyers will not be permitted
22 to use any confidential information that they or any other
23 Steptoe lawyer learned during Steptoe's representation of the
24 victim banks, they may not use that during examination or
25 cross-examination.

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1 THE DEFENDANT: Correct, your Honor.

2 THE COURT: Are you aware that the victim banks may
3 have interests that are in conflict with your interests; for
4 example, that an alleged victim -- as an alleged victim, the
5 victim banks may have an inherent interest in you being
6 convicted that is in conflict with your interests in being
7 acquitted?

8 THE DEFENDANT: Yes. Yes, your Honor.

9 THE COURT: You understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: If you are convicted, the victim banks may
12 be entitled to address the Court at your sentencing, and that
13 could increase the severity of the sentence that I impose, and
14 that, of course, is in conflict with your interests in
15 receiving a less severe sentence.

16 You understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: If you are convicted, the victim banks
19 might be entitled to restitution from you and may, therefore,
20 have an interest in receiving as much restitution from you as
21 permitted by law, which is in conflict with your interests in
22 paying no restitution.

23 You understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Regardless of whether you're convicted,

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1 the victim banks may institute adversarial proceedings against
2 you seeking monetary damages, which is, of course, in conflict
3 with your interests in not paying monetary damages.

4 THE DEFENDANT: Correct.

5 THE COURT: Do you understand that?

6 THE DEFENDANT: Correct, your Honor.

7 THE COURT: You understand there may be other
8 significant ways beyond what I have just described in which the
9 victim banks' interests could be adverse to yours and that it's
10 impossible for me or anyone else to predict what those other
11 ways might be?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: You understand that if the victim banks'
14 interests do conflict with your interests, your lawyers may
15 have ethical obligations to the victim banks that conflict with
16 their ethical obligations to you?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And you understand that that would be the
19 case even though none of your lawyers are permitted to
20 participate in Steptoe's representation of JP Morgan Chase now?
21 Do you understand that?

22 THE DEFENDANT: That's my understanding, yes.

23 THE COURT: And none of the lawyers who previously
24 represented the other victim banks would be permitted to
25 participate here?

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1 THE DEFENDANT: Yes, your Honor. Yes.

2 THE COURT: You understand that those conflicting
3 ethical obligations might cause your lawyers to put the victim
4 banks' interests ahead of your interests?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And you understand that because JP Morgan
7 Chase is a current client of Steptoe, some portion of your
8 lawyers' compensation may be derived from legal fees paid by
9 the victim banks?

10 THE DEFENDANT: Correct, your Honor.

11 THE COURT: And, as a result, you understand that your
12 lawyers might have financial interests, financial incentives,
13 to put JP Morgan's interests ahead of your interests?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand the limitations your
16 lawyers have discussed -- that we've discussed could have an
17 adverse effect on your defense in this case?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: So, we've gone through it a bit, but I'd
20 like to hear, in your own words, how those limitations could
21 adversely affect your defense in this case.

22 THE DEFENDANT: Thank you, your Honor. My
23 understanding is that, your Honor, it seems that there might be
24 some underlying potential conflict from the two unrelated
25 matters of JP Morgan Chase that other associates within the

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1 firm are engaged with. And to the extent that those potential
2 conflicts would cause my lawyers in this case to pull their
3 punches when it comes to JP Morgan Chase, that would be a
4 potential negative impact. And to that extent, I believe that,
5 given the arm's-length relationship between the two, it would
6 not pose any negative impact in this case.

7 THE COURT: When you say the arm's length --

8 THE DEFENDANT: The fact that they're not engaged on
9 those engagements and they're unaware of -- at this point in
10 time and during my engagement with the firm, they're unaware of
11 any information that is happening with those two matters.

12 THE COURT: To be clear, even if they were aware of
13 any confidential information --

14 THE DEFENDANT: They cannot disclose it to me, and it
15 might turn --

16 THE COURT: And can't use it in any way to help you?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Even if it would help you?

19 THE DEFENDANT: Yes, absolutely.

20 THE COURT: You understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: I also want to think through ways in which
23 your lawyers' allegiance to the victim banks could adversely
24 affect the way that they advise you in this case. Some
25 examples include advice as to whether you should plead guilty

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1 or go to trial.

2 THE DEFENDANT: Yes, your Honor, I understand that.

3 THE COURT: Which defenses you should raise?

4 THE DEFENDANT: Yes.

5 THE COURT: Whether you should testify at trial?

6 THE DEFENDANT: Correct, your Honor.

7 THE COURT: Which witnesses should be cross-examined
8 and what questions they should be asked?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Which witnesses to call and what other
11 evidence to offer on your behalf?

12 THE DEFENDANT: Correct.

13 THE COURT: How to examine or cross-examine any victim
14 bank witnesses at trial?

15 THE DEFENDANT: Correct.

16 THE COURT: And what arguments to make on your behalf
17 to the jury?

18 THE DEFENDANT: Correct, your Honor.

19 THE COURT: And what arguments to make to me and what
20 facts to bring to my attention before trial, after trial, and
21 if you are convicted, at your sentencing?

22 THE DEFENDANT: That's correct, your Honor, yes.

23 THE COURT: Just to flesh those out a little bit: You
24 understand that your attorneys may not wish to take positions
25 in this case before trial, during trial, or at sentencing that

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1 are critical of the victim banks even if doing so may help your
2 defense, the sort of --

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: -- pulling the punches concern?

5 THE DEFENDANT: Yes.

6 THE COURT: You're aware that your attorneys may have
7 access to or may have learned information from the victim banks
8 that may be helpful in defending you, but they are absolutely
9 prohibited from using it to defend you, or to examine, or
10 cross-examine any victim bank witnesses because of the
11 attorney-client privilege that applies to the communications
12 between your attorneys and the victim banks?

13 You understand that?

14 THE DEFENDANT: Yes, your Honor. Yes.

15 THE COURT: You understand that your attorneys may be
16 limited in making arguments about your level of involvement in
17 the offense, role in the offense, and culpability? You
18 understand that?

19 THE DEFENDANT: That's correct.

20 THE COURT: Mr. Sadr, have you had an adequate
21 opportunity to discuss the limitations and possible adverse
22 effects on your defense in this case with your current lawyers?

23 THE DEFENDANT: Yes. Yes, your Honor. I have, yes.

24 THE COURT: You understand -- I mentioned this, but
25 the greatest danger to you is the inability of me or anyone

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1 else to foresee all of the possible conflicts that might arise
2 because of Steptoe's simultaneous representation of JP Morgan
3 Chase, its previous representation of other alleged victim
4 banks, at the same time as representing you?

5 THE DEFENDANT: That's correct, your Honor, yes.

6 THE COURT: As a result, the limitations on your
7 lawyers' ability to defend you in this case could adversely
8 affect you more severely than anyone might currently
9 anticipate.

10 You understand that?

11 THE DEFENDANT: That's correct, your Honor, yes.

12 THE COURT: And you do understand that the potential
13 conflicts we have been discussing have existed ever since
14 Steptoe began representing you --

15 THE DEFENDANT: That's correct.

16 THE COURT: -- in August 2018?

17 THE DEFENDANT: Yes.

18 THE COURT: You understand that you have the right to
19 object to your lawyers' continued representation of you based
20 on the existence of actual and potential conflicts?

21 THE DEFENDANT: Yes, I understand, your Honor.

22 THE COURT: You do have the right to counsel free of
23 any conflict whose loyalty to you is absolutely undivided, who
24 is not subject to any factor that might in any way intrude upon
25 his or her loyalty to your interests.

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1 You understand that?

2 THE DEFENDANT: Correct, your Honor.

3 THE COURT: In other words, you are entitled to
4 attorneys who have only your interests in mind and not the
5 interests of any prior or current clients. You understand
6 that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Have you received any inducements,
9 promises, or threats with regard to your choice of counsel?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Have you had an adequate opportunity to
12 discuss the dangers I've described with your current lawyers?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: You do have the right to consult with an
15 attorney who is free from any conflict of interest, so an
16 independent -- what we sometimes call a conflict counsel,
17 someone who has nothing to do with Steptoe & Johnson, you have
18 a right to that. If you can't afford to hire such an
19 independent counsel, I will appoint an independent counsel for
20 you free of any charge to discuss these issues.

21 You understand that?

22 THE DEFENDANT: I understand that.

23 THE COURT: If you did want to discuss the issue with
24 conflict counsel, independent counsel, your communications with
25 that lawyer would be entirely confidential. I wouldn't learn

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1 about them, except to the extent you wanted me to, the Steptoe
2 lawyers wouldn't learn about it, and the government lawyers, it
3 would be entirely independent.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And you can discuss any of these issues
7 with them before you make your decision as to how to proceed.
8 You understand that?

9 THE DEFENDANT: I understand that, your Honor.

10 THE COURT: So I am prepared to adjourn this
11 proceeding, so that you can have more time to discuss the issue
12 with your lawyers or have as much time as you'd like to discuss
13 with a conflict-free attorney, the independent attorney not
14 associated with Steptoe.

15 Would you like -- first, would you like any additional
16 time now to discuss the issue with your current lawyers?

17 THE DEFENDANT: Thank you so much, your Honor. We had
18 these sorts of conversations for a couple of months now, so I
19 think that's been sufficient on that issue. And I appreciate
20 that, and I don't think that would be necessary to have an
21 independent conflict-free consultation at this point in time.

22 THE COURT: Have you had sufficient time to consider
23 even that question, whether you'd like to consult with a
24 conflict-free counsel?

25 THE DEFENDANT: Yes. I believe that was the first

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1 thing that Mr. Heberlig brought up to my attention when this
2 issue came up, and I have almost about two months.

3 THE COURT: And you don't wish to adjourn today's
4 proceeding in order to --

5 THE DEFENDANT: I don't believe that would be
6 necessary, your Honor.

7 THE COURT: Mr. Heberlig, before I get to the final
8 questions, anything you'd like to add or address?

9 MR. HEBERLIG: No, your Honor. We're satisfied with
10 the Court's inquiry.

11 THE COURT: Mr. Krouse, anything?

12 MR. KROUSE: No, no further questions on that.

13 THE COURT: Mr. Sadr, after considering all that I've
14 said today about the ways in which a conflict of interest could
15 adversely affect your defense, do you wish to continue with
16 Mr. Weingarten and Mr. Heberlig from Steptoe & Johnson as your
17 attorneys?

18 THE DEFENDANT: Absolutely, your Honor.

19 THE COURT: You understand that by choosing to
20 continue with your lawyers as your attorneys in this matter,
21 you are waiving your right to be represented by an attorney who
22 has no conflict of interest?

23 THE DEFENDANT: That's correct, your Honor.

24 THE COURT: And you're knowingly and voluntarily
25 waiving your right to conflict-free counsel?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Let me just add, by waiving your right to
3 conflict-free counsel, you will also be -- and I will give you
4 an opportunity to address this directly -- you would waive any
5 postconviction argument on appeal or otherwise, that by virtue
6 of Steptoe's representation of JP Morgan Chase or the other
7 alleged victim banks, that you were denied effective assistance
8 of counsel.

9 You understand that will be an implication of waiver?

10 THE DEFENDANT: That's correct, your Honor.

11 THE COURT: Do you agree to waive any postconviction
12 argument on appeal or, otherwise, that by virtue of Steptoe's
13 representation of JP Morgan Chase and the other alleged victim
14 banks, that you were denied effective assistance of counsel?

15 THE DEFENDANT: Yes, your Honor, I'm willing to waive.

16 THE COURT: Is there anything that I've said to you
17 that you wish to have explained further or any questions
18 related to this proceeding?

19 THE DEFENDANT: Your Honor, there is nothing more that
20 comes to my mind at this point. Thank you so much for being
21 patient with me and walking me through the process. I
22 appreciate that. Thank you.

23 THE COURT: Thank you.

24 Counsel, anything further?

25 MR. KROUSE: No, your Honor.

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1 MR. HEBERLIG: No, your Honor.

2 THE COURT: I do find that Mr. Sadr has knowingly and
3 voluntarily waived his right to conflict-free representation.
4 I thank counsel for their letters and the proposed script on
5 that matter.

6 I should note, also, we did receive a written waiver
7 from JP Morgan Chase dated September 3rd, 2019.

8 Mr. Sadr, you did see that as well?

9 THE DEFENDANT: Yes. Yes, your Honor.

10 THE COURT: The waiver is expressly conditioned on the
11 firm's attorneys not using any confidential information
12 obtained in the course of their representation of the bank and
13 lawyers in Steptoe who normally work on JP Morgan Chase matters
14 will not participate in the representation of you.

15 You understand that?

16 THE DEFENDANT: That's my understanding.

17 THE COURT: That's consistent with what we've
18 discussed throughout today's proceeding. You understand that?

19 THE DEFENDANT: That's correct, your Honor, yes.

20 THE COURT: All right.

21 Counsel, anything else with respect to the conflicts
22 issues?

23 MR. KROUSE: No, your Honor.

24 MR. HEBERLIG: No, your Honor.

25 THE COURT: So we'll turn to scheduling.

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1 I have reviewed the September 3rd letter.
2 Mr. Heberlig, anything you want to add to that?

3 MR. HEBERLIG: Just a brief update, your Honor. I
4 anticipated correctly there has been a continuance in the other
5 matter. That trial is now set for October 19th of 2020. So
6 the decks are here for the date we proposed or any other date
7 consistent with the Court's schedule.

8 THE COURT: Mr. Krouse?

9 MR. KROUSE: Yes, your Honor. The government is
10 available whenever the Court is. I think Mr. Heberlig proposed
11 March 2nd. I don't know if that works for the Court, but we
12 could also do it later in March or any other date after that.

13 THE COURT: I can make that work. I have a slight
14 preference for April, but I couldn't start until April 20th --
15 no, we'll go with March 2nd. That's fine.

16 There's also something, right, Mr. Weingarten?

17 So let me say this: I will put it on the calendar,
18 trial to commence on March 2nd, if we are proceeding to trial.
19 I do set firm trial dates, so I do that for good reason. In
20 part, I think I've already said here, that my chambers' motto
21 is the human heart works on deadlines, so knowing that that
22 date is not going to move will enable all of us to set other
23 matters, set expectations, and do the work that we need to do
24 with a clear understanding that we will proceed to trial on
25 that date.

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1 I have my work cut out for me because I've got the set
2 of motions fully briefed from you to resolve, including the
3 request for a Franks Hearing and the other now fully briefed
4 motions. I will give you resolution to those as soon as I can
5 and let you know if I seek oral argument on any of them.

6 Once we get past the resolution of those motions, I
7 will set a schedule for the remainder of the case. That is to
8 say -- well, I will set a schedule for in limine motions,
9 404(b) motions, and other pretrial submissions once we get past
10 these motions.

11 And as I think about it, when I go back to chambers, I
12 may put something out sooner than that, but we have some time.
13 But I'll set that schedule, so that there's sufficient time,
14 following full briefing, to allow me to dig into them and give
15 you as much resolution as I possibly can, with as much time in
16 advance of trial as I can, so that you can plan accordingly.

17 With that, Mr. Krouse, any matters to update the Court
18 with respect to any ongoing discovery or other issues?

19 MR. KROUSE: Yes, your Honor, just briefly. I think
20 we raised at the last conference that there was some dispute
21 over which documents were marked as responsive in the initial
22 review of those documents by the Manhattan DA's office. The
23 government will, I think, very shortly confer with defense
24 counsel. It's not really a discovery matter. All the
25 documents pertaining to emails with Mr. Sadr's accounts were

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1 produced in discovery. The only question is which of those
2 emails were marked as responsive in the initial review of those
3 documents by the Manhattan DA's office. So, the government
4 will be prepared very shortly to inform defense counsel --
5 there's already been certain documents that have been marked as
6 responsive, have been identified by the government as so-called
7 hot documents, and I think there's been some miscommunication
8 or some cross-signals about whether that was the entire
9 universe of documents that the Manhattan DA's office initially
10 marked as responsive. Part of it is the manner in which they
11 were marked responsive, they didn't operate under the same
12 relativity database and things that the U.S. Attorney's Office
13 would have been using; rather, they went through the emails and
14 pulled them into folders as PDF documents and identified them
15 as responsive to the search warrant in that manner.

16 So, the Manhattan DA's office has been working with
17 our conflict counsel, and the trial counsel have been walled
18 off from this process because there still hasn't been a final
19 determination of which of those documents are attorney-client
20 privileged. So, where we are in the process is the Manhattan
21 DA's office, working with paralegals in our office who are part
22 of the conflict side of the case, have been endeavoring to mark
23 within the relativity databases those documents that have been
24 previously identified by the Manhattan DA's office as
25 responsive, so that we're all operating from the same platform

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1 and the same understanding of what was identified as responsive
2 in that initial review.

3 As I said, from a discovery perspective, all of
4 Mr. Sadr's emails, of which he was a custodian, were provided
5 in the initial Rule 16 discovery, so it's more a question of
6 the responsiveness review that was performed by the Manhattan
7 DA's office and the back story on that, which I think the Court
8 is aware of based on the prior filings in the case, there was
9 some difficulty in transitioning the documents from the
10 Manhattan DA's electronic databases and platforms to the U.S.
11 Attorney's Office electronic database and platforms, and that's
12 something we're working very hard to resolve promptly.

13 The other point I'll make is that the government did
14 obtain email communications from several other custodians that
15 were not controlled directly by Mr. Sadr and, therefore,
16 weren't his accounts. The government's present understanding
17 is that those emails that were part of the hot docs subset
18 included some emails that were from those other custodians,
19 that were not from Mr. Sadr's accounts, and that other than
20 those documents, those other custodians were not fully produced
21 to the defense, and that's something that we just realized
22 happened. There is a subset of documents from those other
23 custodians that were marked as responsive in the initial review
24 of those documents by the Manhattan DA's office, and we're
25 working on getting those documents together to produce to the

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1 defense.

2 So, all of that's to say, there are still ongoing
3 technical issues with the email productions that the government
4 counsel are working hard to wrap our heads around and resolve,
5 and in doing so, I don't anticipate that it would be a
6 tremendous amount of additional information that would be
7 produced in the defense, because, as I said, all the email
8 traffic on Mr. Sadr's accounts were produced in the initial
9 Rule 16 discovery. But there may be an additional production,
10 and I just want the Court to be aware of that.

11 THE COURT: With respect to the materials that
12 Mr. Sadr was the custodian for, defense has all of those, and
13 you're working to complete identification of the subset of
14 those that the DA's office had identified as responsive?

15 MR. KROUSE: Yes, your Honor.

16 THE COURT: So, that's one category of information to
17 be provided by the government, and we'll come to time frame.

18 MR. KROUSE: Yes, your Honor.

19 THE COURT: The second is that there is Rule 16
20 discovery material from custodians other than Mr. Sadr that
21 have not been turned over yet?

22 MR. KROUSE: That is --

23 THE COURT: The material itself as opposed to
24 indications -- information about whether the DA marked it as
25 responsive?

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1 MR. KROUSE: Yes, your Honor. That's my
2 understanding.

3 And whether it would constitute Rule 16 or not, I
4 think is a question, because it's possible that only the
5 responsive documents from those other custodians, since
6 Mr. Sadr is not the -- he is not the custodian of that account,
7 it is possible that, from the government's perspective, the
8 Rule 16 would only consist of the responsive documents to the
9 warrant since that is what the government will be seizing.

10 THE COURT: But there is a subset of that material
11 that has not been turned over?

12 MR. KROUSE: That's my understanding, yes, your Honor.
13 And that is what we're most urgently attempting to resolve,
14 with the assistance of the Manhattan DA's office and with our
15 conflict counsel, who are walled off from the trial counsel.

16 THE COURT: And why wasn't that part of the initial
17 discovery production effort?

18 MR. KROUSE: I don't have a direct answer to that
19 question. We are trying to find out why it wasn't initially
20 produced. I think I'd be speculating, but the view, I think,
21 was that the accounts that were controlled by Mr. Sadr were
22 plainly Rule 16 materials and were produced in their entirety.
23 And I think there was some miscommunication or confusion about
24 whether all of the custodians were produced or only the subset
25 as to Mr. Sadr, and that within the hot documents, there were

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1 documents included that were from the other custodians. But my
2 understanding now, after spending a lot of time with both the
3 Manhattan DA's office and the conflict counsel that's sort of
4 running this program, running this issue for us, is that we've
5 now discovered that there were custodians searched and
6 documents seized that were not Mr. Sadr's accounts, that were
7 not produced in that initial Rule 16 discovery.

8 THE COURT: Well, that does sound like a problem.

9 MR. KROUSE: Yes, your Honor.

10 And so I wanted to alert the Court of that.

11 THE COURT: What's your time frame for -- you said --
12 I think you used the word now we've discovered now that this
13 issue. When did you discover this?

14 MR. KROUSE: We discovered it in the lead-up to the
15 reassignment of the case, and it's obviously not an excuse in
16 the least. The government counsel have changed over, so there
17 are new government counsel, and I think in the process of
18 attempting to understand the case, and what had been produced
19 and everything that came before, we did ask some questions
20 about the discovery and dug into that, and that's when we
21 discovered the issue. So I don't know the exact date, but it
22 was sometime in mid-August.

23 THE COURT: Okay. And what's your time frame here? I
24 have to give them -- they might have motions related to that
25 material.

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1 MR. KROUSE: Understood, your Honor.

2 The time frame, I think, is within two weeks, we
3 should be able to have all of those issues worked out and
4 documents produced to the defense.

5 THE COURT: What happens, on a daily basis, between
6 now and two weeks from now? Why does it take two weeks?

7 MR. KROUSE: My understanding, from the Manhattan DA's
8 office and from our conflict counsel, is that it is fairly
9 time-intensive for them to take a PDF document and determine
10 where it is within the relativity database, to then mark that
11 exhibit, and that's all being done sort of by hand by the
12 paralegals in the Manhattan DA's office.

13 THE COURT: What's the volume of material we're
14 talking about?

15 MR. KROUSE: So, I'm not positive about the volume
16 with respect to -- I can give some numbers. There were 420,
17 approximately, hot documents that were produced.

18 THE COURT: The hot doc marking, that came from the
19 Manhattan DA's office or that came from your office?

20 MR. KROUSE: That came, my understanding, from our
21 office in the process of drafting the complaint and charging
22 the case.

23 THE COURT: And that consisted of both materials for
24 which Mr. Sadr was the custodian and materials for which other
25 folks other than Mr. Sadr was the custodian, and it consisted

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1 of some materials that had been marked responsive by the
2 Manhattan DA's office and materials which had not been marked
3 as responsive by the Manhattan DA's office? Do I have that
4 right?

5 MR. KROUSE: I think, yes, except for that last part.
6 I think all of those had been responsive is my understanding.
7 So that's --

8 THE COURT: So do you know, approximately, what is the
9 volume of material that has been turned over up to this point?

10 MR. KROUSE: All of the documents where Mr. Sadr was
11 the custodian, and that's in the many, many thousands of
12 emails. I don't have an exact number, but it's substantial.
13 And I will say I think that's the majority of the hot docs are
14 from Mr. Sadr's, as one might expect. The emails that he's
15 directly on are the most pertinent in the case. And so a lot
16 of the 420 are from Sadr custodian accounts. There was also a
17 separate folder that was provided to the defense called
18 indictment documents, and those were -- I said complaint
19 earlier, but I meant indictment, those are the documents that
20 were directly referenced in the indictment, and so those, I
21 think, were separately produced in a folder. And then all of
22 Sadr's documents were produced in Rule 16.

23 My understanding, my present understanding, which I
24 think is a moving target somewhat because I think there is some
25 duplicate documents, and until all of those are marked in the

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1 relativity database, and we can just run the program to know
2 how many total documents there are, I was told 2200 documents
3 were marked responsive and were not in the hot docs.

4 THE COURT: Okay.

5 And were not materials that Mr. Sadr was the custodian
6 for or could be?

7 MR. KROUSE: Or could be. Or could be. Some subset
8 of that 2200 would be non-Sadr custodial documents, but the
9 majority of -- what I am being told is the majority of the 2200
10 are from Sadr accounts, so would have already been produced in
11 Rule 16. But my understanding is there are some subset, and I
12 don't have an exact number for that subset, would have been
13 from noncustodial accounts.

14 THE COURT: So, some subset of 2200?

15 MR. KROUSE: And I think it would be on the smaller
16 end of the subset, but I don't have an exact number.

17 THE COURT: So, you're thinking it's within that
18 hundreds or less of materials that have not been turned over at
19 all yet that will be turned over and within the next two weeks?

20 MR. KROUSE: Yes, your Honor.

21 THE COURT: And those are essentially email from
22 people other than Mr. Sadr?

23 MR. KROUSE: Yes, your Honor.

24 THE COURT: What else are you learning?

25 MR. KROUSE: That's the only update we have, your

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1 Honor. Obviously, our attention is very focused on this
2 particular issue, and we are -- by "we," I mean mainly conflict
3 counsel and the Manhattan DA's office, they're working very
4 diligently at our request to resolve this as quickly as
5 possible, but I'm confident within two weeks, it will be
6 resolved.

7 THE COURT: All right. I'd certainly like a letter in
8 two weeks' time -- actually, let me hear from you in one week
9 with an update on where you are and two weeks confirming it's
10 been completed.

11 MR. KROUSE: Yes, your Honor.

12 MR. HEBERLIG: May I be heard on this?

13 THE COURT: You may.

14 MR. HEBERLIG: I have to say I'm quite surprised by
15 what we just heard, and I'd like to take the issues in reverse
16 order.

17 The documents from other custodians, we did
18 understand, both our predecessor counsel at Arnold & Porter and
19 then us, when we got on the scene, that other email accounts
20 were searched that didn't belong to Mr. Sadr. His entire
21 family and friends were searched. From the very outset, we
22 asked -- "we" meaning Arnold & Porter first and then we, when
23 we came on the case, asked for complete disclosure of all of
24 those emails that were seized, and we were advised explicitly
25 that we could not be provided any of the emails that were not

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1 deemed pertinent pursuant to the search warrants, that we had
2 already received the pertinent documents in that what's now
3 being described as hot documents production, but what up until
4 this point has been described as the pertinent documents.

5 So --

6 THE COURT: You understood the 420 to not just be hot,
7 but the only pertinent material?

8 MR. HEBERLIG: Absolutely. And we have written
9 representations from the government that these were the
10 pertinent, nonprivileged documents. So that's a term of art in
11 this context, obviously. So, with respect to those
12 noncustodian emails, we also have the situation that back in
13 July of last year, maybe prior to July, Judge Carter ordered
14 the government to complete discovery by mid-July. And the
15 government came into court at a status conference and
16 represented, discovery is now complete. That's 17 or 18 months
17 ago. They were pushing for a fall of 2018 trial date back
18 then. So, I'm, frankly, astonished that we're hearing there
19 are some other subset of material we didn't receive.

20 As to Mr. Sadr's emails, we have been advised that
21 those 420 documents, which consist of about 4,000 pages,
22 reflected the pertinent documents. We understood that to mean
23 those that the agents who executed the search warrant deemed
24 pertinent. This issue is completely wrapped up in our motion
25 to suppress the search warrant and our motion for return of

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1 seized property. I think when the Court digs into those, you
2 will see that these warrants were facially deficient. I mean,
3 the argument we heard today, frankly, makes our case, at an
4 absolute minimum, an evidentiary hearing is warranted here.
5 The U.S. Attorney's Office can't even keep straight what
6 happened here.

7 We're told now that the Manhattan DA's office is still
8 involved? I'd like to know, is Gary lynch, who's a special
9 Assistant U.S. Attorney, involved in that process? Because the
10 current state of play is the trial team, the prosecution team,
11 is not permitted to access anything other than these pertinent
12 documents because there were a host of privilege issues, as
13 well, with the material seized by the search warrant.

14 Now, those privilege issues and the filter review, we
15 understood, were essentially obviated because the only
16 documents that were relevant, the only pertinent documents
17 we've had a back-and-forth with the filter team about, and they
18 don't have attorney-client privileged material in them. There
19 were a few marital communications we advised the filter team we
20 object to going over to the trial team, and we don't understand
21 there to be any dispute there. But if we're now reopening this
22 process to, I just heard, another 2200 documents that might
23 have been deemed responsive to the search warrants, there quite
24 likely is going to be a whole host of privilege issues because
25 the people who executed the search warrant had no regard for

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1 the attorney-client privilege or marital communications. We
2 have not been provided, at any stage of this case, any
3 instructions given to the executing officers. We know, from
4 what was provided to us in a series of sort of botched
5 discovery productions that I won't bore the Court with all of
6 the technical problems we've had over nine months, but
7 privileged communications were widespread to the point that
8 Judge Carter ordered the government, the prosecution team,
9 cease accessing the discovery, you are no longer allowed to
10 look at those materials. I believe that order is still in
11 effect, with the exception of this small universe of the
12 pertinent documents.

13 So, this is a mess. And you're absolutely right,
14 there will be a motion from the defense. We'll wait and see
15 what the government has to say, but we will be moving to
16 exclude any use of these late discovery documents more than a
17 year after the government was ordered to complete discovery,
18 and we're obviously vigorously pursuing an evidentiary hearing
19 because we think all this stuff should be suppressed.

20 THE COURT: Mr. Krouse?

21 MR. KROUSE: Yes, your Honor.

22 THE COURT: It does overlap with the suppression
23 issue, doesn't it?

24 MR. KROUSE: It does to some extent, but not entirely.
25 I mean, I think not to excuse what I think is a real issue, the

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1 production -- the late production of these other custodians --

2 THE COURT: The basics of this, you have a discovery
3 deadline. We're talking about material within the government's
4 possession that was not turned over within that deadline,
5 correct?

6 MR. KROUSE: Yes, your Honor, as with respect to
7 the --

8 THE COURT: And material that the existence of which
9 is contrary to express representations made by the government?

10 MR. KROUSE: That, I'm not positive about. That's how
11 Mr. Heberlig is representing it, and I'm not saying he's
12 misrepresenting. I just don't have any direct knowledge about
13 that point. I will say that with respect to discovery, the
14 vast majority of the documents that would be useful to the
15 government or to the defense were produced a very long time
16 ago, and that's all the emails with Mr. Sadr as the custodian,
17 and that is the heart of the case.

18 So, the question of whether that was produced -- that,
19 I think, both sides agree, there is no issue with respect to
20 the discovery as to those accounts. There is this limited --

21 THE COURT: I'm sorry, is that what you've just
22 described limited to the 420 so-called hot docs, or do you mean
23 to indicate that as long as it was Mr. Sadr's emails and had
24 been turned over, even if outside that hot doc marking, you
25 mean to include that or you mean the 420?

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1 MR. KROUSE: I mean to include beyond the 420, if they
2 were, in fact, identified as pertinent and relevant by the
3 Manhattan DA's office in the initial review of those documents.

4 I'll say on just the point of Mr. Lynch, who is a
5 special Assistant U.S. Attorney assigned to this matter, he is
6 similarly walled off from the ongoing review of documents based
7 on Judge Carter's order. So, the order applies both to him and
8 to us. The people working on the Manhattan DA's side with our
9 filter team are paralegals who are merely going into the
10 folders where pertinent and responsive documents were pulled in
11 and attempted to dedupe -- deduplicate those and identify where
12 they fall in the relativity database for the full production of
13 Mr. Sadr's emails.

14 So, that's more of a pertinent and responsive issue,
15 which I can anticipate having litigation over, and that is a
16 universe beyond the 420. So I think if we're thinking about
17 the issues, Mr. Sadr's emails were all produced. Some subset
18 of the 420 include Mr. Sadr's emails. I think --

19 THE COURT: Do you, as you stand here, know what the
20 representation was with respect to the hot docs?

21 MR. KROUSE: With respect to the hot docs, if I --

22 THE COURT: It's one thing for the government to say,
23 look, here's all his emails, here's what we're identifying as
24 hot docs, it's another thing to say these 420 documents, most
25 of which were Mr. Sadr's emails, are the pertinent documents

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1 and nothing beyond that will be pertinent, right?

2 MR. KROUSE: Yes.

3 THE COURT: Those are very different representations.

4 MR. KROUSE: I agree in that that would be the
5 government's position, that they are very different.

6 I don't believe, standing here, the government ever
7 said these 420 documents are the sole and exclusive pertinent
8 documents in the case. I don't think that representation was
9 made. If defense counsel was able to point to a transcript or
10 a letter, I can stand corrected, but my understanding is --

11 THE COURT: Go ahead, Mr. Heberlig.

12 MR. HEBERLIG: I have an email, not a transcript, but
13 it was from prior AUSA in the case, Matthew La Roche, to
14 Arnold & Porter in an exchange about discovery on July 10,
15 2018, and Mr. La Roche said: "We previously produced the
16 entirety of your client's account on April 5; that is, all
17 material obtained pursuant to our search warrants. On May 15,
18 we produced a subset of those emails (as well as emails from
19 other accounts) that were identified as nonprivileged and
20 pertinent."

21 It's not a subset or small portion. Did he say these
22 are the only pertinent documents? No, he did not. But was
23 that a fair implication from what he said? Yes, it was. And
24 the reason why is it's not just a matter of disclosure. They
25 did disclose all of the emails they seized to us, but they

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1 seized 15 years' worth of his emails that consist of over
2 100,000 messages. So we've understood for the last 17 months
3 that this case is about the 420 pertinent documents, not some
4 broader universe, and we have been on notice, but we've been on
5 notice of his entire life for 15 years. This is not a small
6 issue. Our preparation has focused on the pertinent documents,
7 and they're changing the game at this late stage.

8 THE COURT: Can I see what you read from?

9 MR. HEBERLIG: You know, it's my --

10 THE COURT: Never mind.

11 MR. HEBERLIG: I can provide you with the email, but
12 this is just an excerpt of it. It's typed --

13 THE COURT: Okay.

14 MR. HEBERLIG: Pardon?

15 THE COURT: I suppose I'll learn more -- this will be
16 litigated.

17 Okay. Well, I suppose, defense counsel, your
18 application at this point is simply to be able to file a motion
19 related to this, right?

20 MR. HEBERLIG: Yes, your Honor. And for the status
21 quo to remain, which is that the prosecution team is only
22 permitted to access those pertinent documents, or what are now
23 described as hot documents, but I think if they go beyond that
24 on their own, they're running a risk that they're reviewing and
25 tainting themselves over materials that we say weren't deemed

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1 pertinent pursuant to the warrant and, therefore, should not be
2 reviewed by the government because it would be the product of a
3 Fourth Amendment violation.

4 MR. KROUSE: And I will represent that no one from the
5 prosecution team is reviewing any of those documents beyond the
6 hot -- that is part of the difficulty, frankly, is that all of
7 this is happening and not being directed or we can't really
8 provide input on substance. So, it is, my understanding, a
9 very mechanical process that's happening, which is pulling
10 documents from folders in which they were dragged into in order
11 to identify documents that were marked as pertinent back in
12 that review and then have it migrated to our system, so that we
13 can provide it to the defense counsel as the overall universe
14 of pertinent documents, some of which is beyond the 420 hot
15 docs.

16 So, that is sort of the mechanical nuts and bolts of
17 what's happening. And as to Mr. Heberlig's concern that the
18 government is -- and by "government," I mean trial counsel --
19 is involved in any way, I can assure the Court and defense
20 counsel that the trial team, which includes Mr. Lynch, remains
21 walled off from that process.

22 THE COURT: And that's because of Judge Carter's order
23 and the necessity of the privilege review?

24 MR. KROUSE: Yes, your Honor.

25 THE COURT: Okay.

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1 Well, given where we are now, I think the best we can
2 do is, Mr. Krouse, obviously, in light of the recent
3 realization as to the additional potential materials, you've
4 got to have your foot on the gas with respect to that. I'll
5 hear from you in a week. It will be done within two weeks.

6 Mr. Heberlig, do you want to set a schedule now for
7 filing with respect to this or after you see what comes
8 through?

9 MR. HEBERLIG: Why don't we see what comes, your
10 Honor. And, again, it's sort of tied in with the other pending
11 motions.

12 THE COURT: So, why don't we say three weeks from
13 today, we'll hear from you, if you either want to supplement
14 the existing motions or file any additional motions.

15 MR. HEBERLIG: Just to be clear, that three weeks is
16 for us to give you notice of that, not to file --

17 THE COURT: Notice and a proposed schedule.

18 MR. HEBERLIG: Thank you, your Honor.

19 THE COURT: Anything else I can address at this time?

20 MR. WEINGARTEN: Just --

21 THE COURT: Go ahead, Mr. Weingarten.

22 MR. WEINGARTEN: A few small points, your Honor.

23 I heard the Court say that you will take into
24 consideration whether or not there will be argument on the
25 motions. And I'm certainly not pressing it, but everybody's

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1 schedule is filling in the fall. Is there any possibility we
2 could reserve some time in case there will be argument? And
3 I'm guessing whatever I thought about the likelihood of
4 argument was increased with what I just heard from the
5 government.

6 THE COURT: Well, I haven't -- I've been gone for two
7 weeks, and I'm just back, so I need to dig in and figure out
8 what my --

9 MR. WEINGARTEN: Okay.

10 THE COURT: -- time frame for being able to actually
11 get to them is, and from that, I'll know when I would likely
12 want argument. So, as soon as I can, I'll put out an order
13 holding a date for argument, but I don't, as I sit here, know
14 what I want that to be.

15 MR. WEINGARTEN: Okay. That's fine.

16 And there are two conditions of bond I'd like the
17 Court to consider. One is a curfew. As we get closer to
18 court, it would certainly convenience counsel if we could have
19 access to our client in the evenings.

20 THE COURT: What's the curfew?

21 MR. WEINGARTEN: 7:00. And we understand that the
22 probation officer in Washington has no objection.

23 THE COURT: You're seeking complete relief from the
24 curfew or --

25 MR. WEINGARTEN: Midnights. Just the way my schedule

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1 works, it would be nice to have access to the client in the
2 evening.

3 THE COURT: Mr. Krouse?

4 MR. KROUSE: Your Honor, I don't fully understand what
5 the request is.

6 THE COURT: To change the curfew. Right now, it runs
7 from, what, 7:00 p.m. to 7:00 a.m., something like that?

8 MR. WEINGARTEN: Yes.

9 THE COURT: And so the request is to change it from
10 midnight -- he's got to be home from midnight to 7:00 a.m.

11 MR. WEINGARTEN: Just so he can come to our office.

12 MR. KROUSE: Your Honor, I haven't had a chance to
13 consider this or to speak to the pretrial officer about it. I
14 certainly would have no objection to him being released from
15 the curfew for purposes of meetings with his counsel, but it
16 seems to me that a wholesale revision of the curfew, especially
17 to make it as late as midnight, doesn't seem appropriate
18 without having given it much thought. If the only reason is
19 that he needs time to meet with his attorneys, it seems like a
20 more narrowly crafted remedy is possible.

21 MR. WEINGARTEN: I'm not sure who I pose this to, but
22 I have spoken to prosecutors about this in the past. In
23 addition, his ankle bracelet. And our understanding is the
24 probation officer in D.C. has absolutely no objection to
25 lifting that obligation as well, and, obviously, we would like

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1 that, too, and would respectfully request the Court to consider
2 that.

3 THE COURT: That doesn't have anything to do with
4 meeting with counsel?

5 MR. WEINGARTEN: No.

6 MR. KROUSE: So we object to that, your Honor. Based
7 on the previous litigation over the defendant's bail, as the
8 Court is aware, he was detained, and the government's position
9 was, and remains, that he poses a risk of flight. I think the
10 only reason he was released on bail was that it was under
11 strict pretrial supervision with electronic monitoring.

12 THE COURT: I don't see any reason to revisit that
13 decision.

14 MR. WEINGARTEN: The only thing I would request is the
15 probation officer who deals with him constantly has very
16 decided views on the subject, and I would respectfully request
17 the Court to consider that.

18 MR. KROUSE: None of those have been communicated to
19 us, your Honor, but the government's position is unchanged,
20 that that condition --

21 THE COURT: So, Mr. Krouse, you'll communicate with
22 the probation officer, see what he or she recommends. If the
23 government consents to the requested alteration for the ankle
24 bracelet, you'll let me know within a week's time.

25 MR. KROUSE: If we consent, your Honor?

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1 THE COURT: Yes.

2 MR. KROUSE: And then if we do not consent?

3 THE COURT: You'll let me know that.

4 MR. KROUSE: Okay.

5 THE COURT: And, Mr. Weingarten, if the government
6 doesn't consent, I'll welcome a letter briefing indicating what
7 the probation officer's views are.

8 We'll do the same with respect to -- I'm inclined to
9 change the curfew for purposes of meeting with counsel, if the
10 representation is you need more time later in the evening.
11 That strikes me as a reasonable request. But I'll hear from
12 the government on that and the ankle bracelet within a week,
13 and, Mr. Weingarten, if there's a dispute on either of the
14 issues, I'll hear from you the week after that.

15 MR. WEINGARTEN: Thank you.

16 THE COURT: All right.

17 Anything else I can address at this time?

18 MR. KROUSE: No, your Honor. Thank you.

19 THE COURT: Counsel?

20 MR. WEINGARTEN: No.

21 THE COURT: Thank you. We are adjourned.

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